PRITHIPAL SINGH @ KIRPAL SINGH S/O WADHAWA SINGH

v.

DATUK BANDAR, KUALA LUMPUR AND GOLDEN ARCHES RESTAURANTS SDN. BHD. (INTERVENERS)

HIGH COURT, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[ORIGINATING MOTION
NO. R1-25-85-91]
6 APRIL 1993

LANDLORD & TENANT: Rent controlled premises - Recovery of possession of premises for development purposes - Section 19 Control of Rent Act 1966 - Application for certiorari - Whether decision taken under s.19 of the Act is amenable to certiorari.

The applicant applied for an order of *certiorari* to quash the order of the Datuk Bandar Kuala Lumpur allowing the application of the intervener for possession of premises for development purposes pursuant to s. 19 of the Control of Rent Act 1966 (the Act). The applicant contended that the person who exercised the powers of the Datuk Bandar in respect of the interveners application had acted without jurisdiction and that therefore his order was *void ab initio.*

The applicant further complained that he was not supplied with the copy of the application made by the intervener nor with the notes and grounds of the decision of the Datuk Bandar.

The question that arose for determination was whether the decision of the Datuk Bandar under s.19 of the Act was amenable to *certiorari*.

Held:

[1] The delegation of powers in the Perwakilan Kuasa, by the Datuk Bandar, was made under s. 4(6) of the Federal Capital Act 1960 and the delegation of powers to Mr. Wan Kat Few was therefore valid.

[2] It was clear from the cases of *Mohamed Shariff Ashraff* and *Tan Hee Lock* that the decision of the Datuk Bandar Kuala Lumpur under s. 19 of the Act was not amenable to *certiorari*.

[3] Under s.19 of the Act, there was no obligation to supply the applicant with a copy of the application. The duty of the Datuk Bandar was to satisfy himself that the requirements therein were satisfied. Once he was so satisfied he was bound to make the order.

[Application dismissed with costs].

Cases referred to:
Mohamed Shariff Ashraff & Anor. v. The Commissioner for Federal Capital Kuala Lumpur & Anor. [1972] MLJ 69 ***(foll)***
Tan Hee Lock v. Commissioner for Federal Capital & Ors. [1973] 1 MLJ 238 ***(foll)***
Mak Sik Kwong v. Minister of Home Affairs Malaysia [1975] 2 MLJ 168 ***(cit)***
J.P. Berthelsen v. Director General of Immigration, Malaysia & Ors. [1987] 1 MLJ 134 ***(cit)***
Rohana bte Ariffin & Anor. v. Universiti Sains Malaysia [1989] 1 MLJ 487 / [1988] 1 CLJ 559 ***(cit)***
Lonrho plc v. Secretary of State for Trade and Industry [1989] 2 All ER 609 ***(refd)***

Legislation referred to:
Control of Rent Act 1966, s. 19
Federal Capital Act 1960, s. 4(6)

For the applicant - Karpal Singh; M/s Karpal Singh &Co.
For the respondent - Rajeswaran (R. Abraham with him); M/s. Shook Lin & Bok
For the interveners - P.H.G. Singh (Paul Chua with him); M/s. L.H. Chua

JUDGMENT

Wan Adnan Bin Ismail J:

This is an application for an order of *certiorari* to quash the order of the Datuk Bandar Kuala Lumpur under s. 19 of the Control of Rent Act 1966 made on 14 May 1991. On 12 February 1991 the Datuk Bandar of Kuala Lumpur received from the Intervener an application for the recovery of possession of premises known as No. 163, Jalan Tuanku Abdul Rahman Kuala Lumpur for development purposes under s. 19 of the Control of Rent Act 1966. Mr. Wan Kat Few who was the Timbalan Pengarah, Jabatan Penilaian dan Pengurusan Harta Dewan Bandaraya Kuala Lumpur exercised the powers of the Datuk Bandar in respect of the application.

According to him, with the assistance of a Rent Officer in his department, he made enquiries and found that the chief tenant was not Tan Buoy Kow as stated in the application but one Kwai Ying and that there were

six (6) sub-tenants. A letter was then sent to the chief tenant and the sub-tenants (one of whom is the Applicant) to attend a meeting on 8 May 1991. At the request of the Counsel for the applicant the meeting was postponed to 14 May 1991. At the meeting which was attended by the applicant and his Counsel, Mr. Wan said he made further enquiries. He said that as all the requirements of s.19 of the Act had been complied with he made the order applied for.

Counsel for the applicant in his written submission submitted that the 'Perwakilan Kuasa' (Ex. WKF1) from theDatuk Bandar to Mr. Wan Kat Few was invalid as it was not made by the Minister. Mr. Wan according to the Counsel, therefore has acted without jurisdiction and his order dated 14 May 1991 was *void ab initio.*

The Perwakilan Kuasa reads as follows:-

> Saya Elyas Omar Ketua Setiausaha Kementerian Wilayah Persekutuan Yang Menjalankan Tugas-tugas Datuk Bandar Kuala Lumpur Mengikut s. 4(7) Akta Ibu Kota Persekutuan 1960 Dan Menurut Kuasa-kuasa Yang Telah Diberikan Kepada Saya Dibawah s. 4(6) Aka Ibu Kota Persekutuan 1960 Saya Dengan Ini Memberi Kuasa Kepada Pengarah Dan Timbalan Pengarah Penilaian Dan Pengurusan Harta Untuk Menjalankan Tugas-tugas Dibawah s. 18A Akta Kawalan Sewa 1966

Section 4(6) of the Federal Capital Act 1960 states:

> (6) where by or under this Act or any other written law the Commissioner is empowered to exercise any powers or perform any duties he may by instrument in writing delegate, subject to such conditions and restrictions as may be prescribed in such instrument, the exercise of such powers or the performance of such duties to any person described by name or office:
>
> Provided that nothing in this section shall apply to any power to make any subsidiary legislation conferred upon him by or under this Act or any other written law.

It is clear that the delegation was made under s. 4(6) and not s. 4(7). The mention of s. 4(7) in the Perwakilan Kuasa was merely to show how Elyas Omar who was at that time the Secretary General of the Ministry of the Federal Territory became vested with the powers and duties of Datuk Bandar. The delegation of powers to Mr. Wan Kat Few is therefore valid.

Now I have to decide whether the decision of the Datuk Bandar under s. 19 of the Act is amenable to *certiorari*.

In *Mohamed Shariff Ashraff & Anor. v. The Commissioner for Federal Capital Kuala Lumpur & Anor.* [1972] MLJ 69, Ong Hock Sim FJ delivering the judgment of the Federal Court said:

> We are also in agreement with the Chief Justice that s.18A (now 19) leaves no discretion with the commissioner upon proof of compliance with s. 18A(1) (a) (b) and (c) already quoted in his judgment. In the absence of any provision as to the mode of inquiry, we are of the view that no question of failure to observe the principles of natural justice can arise. The Commissioner's functions under s. 18A appear to us purely administrative and any act pursuant thereto is not amenable to *certiorari.*

The above proposition was reaffirmed by the Federal Court in the case of *Tan Hee Lock v. Commissioner for Federal Capital & Ors.* [1973] 1 MLJ 238 where Gill FJ delivering the judgment of the Court said:

> It is clear from the authorities that natural justice does not mean that a person performing an administrative or ministerial act must follow the procedure of a Court of law or adopt procedure analogous to that of a Court of law. I do not think I can accept the submission that s. 18A(2) of the Act requires the Commissioner to hold any formal inquiry. What the section says is that the Commissioner shall "after making such enquiries as he thinks fit, consider such applications and make an order or refuse to make an order". To make enquiries, to my mind, does not mean to hold a formal inquiry. The only duty of the Commissioner is to see that the application conforms to the requirements of s. 18A of the Act.

The Counsel for the applicant urged me not to follow the above two authorities but to consider the following authorities:-

(i) *Mak Sik Kwong v. Minister of Home Affairs Malaysia* [1975] 2 MLJ 168.
(ii) *J.P. Berthelsen v. Director General of Immigration, Malaysia & Ors.* [1987] 1 MLJ 134.

(iii) *Rohana bte Ariffin & Anor. v. Universiti Sains Malaysia* [1989] 1 MLJ 487

I find that these authorities do not deal with rent control legislation. The first case dealt with the question of deprivation of citizenship, the second case was in relation to employment pass under the Immigration Regulations, while the third was in connection with dismissal from a position in a university. The Federal Court cases of *Mohamed Shariff Ashraff* and *Tan Hee Lock* decided the very issue before me now. These cases are binding authorities. It is clear from these authorities that the decision of the Datuk Bandar Kuala Lumpur under s. 19 of the Control of Rent Act 1966 is not amenable to *certiorari*.

Even if the rules of natural justice are applicable I find that there has been no breach of the same by the Datuk Bandar.

The applicant complained that he was not supplied with the copy of the application made by the Intervener and with the notes and grounds of the decision of the Datuk Bandar.

Under s. 19 of the Act there is no obligation to supply the applicant with the copy of the application. The duty of the Datuk Bandar under the section is to satisfy himself that the requirements therein are satisfied. Once he is so satisfied he is bound to make the order. Ong CJ in his judgment (High Court Judgment) in the *Ashraff* case said:-

> In the public interest Parliament had thought fit to put shackles upon the rights of the landlord of controlled premises to deal with his property as he deems fit. Section 18A is clearly one of those measures. It imposes three conditions to be fulfilled by the landlords. Once they succeed in so doing, my view is that tenants have no say at all in the matter. The discretion of the Commissioner whether or not to make an order is of a limited nature ... where, however, the evidence offered is satisfactory, I think it would be an abuse of his powers to reject the application, since proof of compliance with paragraphs (b) and (c) leaves him with no discretion at all unless he deliberately ignores the law.

From the notes of evidence taken at the enquiry (Ex. WKF7) it is clear that the applicants Counsel had the opportunity to pursue the application at the enquiry. No objection was raised. It was not challenged that all the three requirements had been satisfied. The applicant was merely requesting for a period of more than six months to be given to him within which to vacate the premises. In this present application also the applicant is not alleging that the application before the Datuk Bandar was in anyway defective or not in compliance with the provisions of s. 19 of the Act.

As regards the absence of the reasons for the decision of the Datuk Bandar, I would only like to quote a passage from the judgment of the House of Lords in *Lonrho plc v. Secretary of State for Trade and Industry* [1989] 2 All ER 609 which reads as follows:-

> The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance for the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker who has given no reasons cannot complain if the court draws the inference that he had no rational reason for his decision.

I therefore dismissed the application with costs.